

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

COREY MATTHEW EBBERT,

Plaintiff,

v.

CIVIL ACTION NO. 1:17CV193
(Judge Keeley)

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 23], DENYING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [DKT. NO. 18], AND
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [DKT. NO. 21]**

On November 7, 2017, the plaintiff, Corey Matthew Ebbert ("Ebbert"), filed a complaint against the defendant, the Acting Commissioner of Social Security ("Commissioner") (Dkt. No. 1), seeking review of the Commissioner's final decision denying his applications for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") due to: 1) "moderate cervical curvature (leftward) dystonia/positionalcervical curvature vs. torticollis; 2) left shoulder instability (prior brachial plexus injury); and 3) headaches, obesity, anxiety disorder and major depressive disorder without psychotic features." Id. at 2. According to Ebbert, the Commissioner's decision denying her benefits "is not supported by substantial evidence." Id. at 3. The Commissioner answered the complaint and filed the administrative record on February 5, 2018 (Dkt. Nos. 12, 13).

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Pursuant to 28 U.S.C. § 636 and the local rules, the matter was referred to the Honorable Robert W. Trumble, United States Magistrate Judge for initial review. In a Report and Recommendation ("R&R") dated September 28, 2018, Magistrate Judge Trumble recommended that the Court deny Ebbert's motion for summary judgment and grant the Commissioner's motion for summary judgment (Dkt. No. 23). Following a careful review of the record, he concluded that the Administrative Law Judge's decision to deny benefits was supported by substantial evidence. Id.

The R&R informed the parties of their right to file "written objections identifying the portions of the Report and Recommendations to which objection is made, and the basis for such objection." Id. at 21. It further warned that failure to do so would result in waiver of the right to appeal. Id. Despite receipt of the R&R, neither party filed objections to the recommendation.

"The Court will review de novo any portions of the magistrate judge's Report and Recommendation to which a specific objection is made . . . and the Court may adopt, without explanation, any of the magistrate judge's recommendations to which the prisoner does not object." Dellacirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D. W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th

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Cir. 1983)). Failure to file specific objections waives appellate review of both factual and legal questions. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984); see also Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991).

Having received no objections to the R&R, the Court has no duty to conduct a de novo review of Magistrate Judge Trumble's findings. Furthermore, following a review of the R&R and the record for clear error, the Court:

- 1) **ADOPTS** the R&R (Dkt. No. 23);
- 2) **DENIES** Ebbert's Motion for Summary Judgment (Dkt. No. 18);
- 3) **GRANTS** the Commissioner's Motion for Summary Judgment (Dkt. No. 21); and
- 4) **DISMISSES** this civil action **WITH PREJUDICE** and **DIRECTS** that it be stricken from the Court's active docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court **DIRECTS** the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record.

Dated: November 9, 2018.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE